IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.411 OF 2006
WITH
CIVIL APPLICATION NO.499 OF 2006
ALONGWITH
APPEAL FROM ORDER NO.412 OF 2006
WITH
CIVIL APPLICATION NO.500 OF 2006

HI TOS LINER AGENCY PVT.LTD. ..APPELLANT.

V/s.

HIND ELASTOMERS PVT.LTD. & ORS. ..RESPONDENTS.

Mr.V.K.Ramabradran with Neha Pathak i/b.D.H.Law Associates for appellant.

Mr.P.C.Kansara i/b. Santosh Raje for respondents.

CORAM: A.M.KHANWILKAR,J

DATE : JUNE 16, 2006.

P.C. :

1. Heard counsel for the parties.

2. Admit.

3. Mr.H.N.Shaikh waives service for respondent no.1 in both the appeals, who is the contesting party. Other respondents are formal parties for the purpose of the present proceedings.

4. As short question is involved, both the appeals are taken up for final hearing forthwith by

consent.

5. Appeal from Order No.411 of 2006 challenges the order passed by the Trial Judge dated 30th May, 2006 on Notice of Motion No.2105 of 2006 in Suit St.No.2414 of 2006. The Appeal from Order No.412 of 2006 challenges the order passed by the same trial Judge dated 1st June, 2006 in the same Notice of Motion No.2105 of 2006. The respondent No.1/plaintiff filed suit for following reliefs.

> (a) that this Hon'ble Court be pleased to declare that the Defendants have wrongfully withheld the material of Container No.TCKU 9542301 belonging to the Plaintiff and the same is illegal and bad in law.
>
> (b) The Hon'ble Court may be pleased to declare that the Plaintiffs are entitled to receive the goods belonging to the Plaintiffs covered under Bill of Lading No.2651 and in Container No.TCKU9542301 on the same terms and conditions i.e. on payment of Rs.11,330/- being destination charges as paid for delivery of goods of the first consignment of Container No.GVDU 506928-0.
>
> (c) Pending the hearing and final disposal of the suit, the Defendants be restrained by and order and injunction of this Hon'ble Court from in any manner preventing the Plaintiff from taking delivery of the material of the Container No.TCKU954230-1 covered under Bill of Lading No.2651 and on the same terms and conditions i.e. on payment of Rs.11,330/- which was precondition for delivery of goods of the first consignment of Container No.GVDU 506928-O belonging to the Plaintiffs on such terms and conditions as this Hon'ble Court may deem fit and proper.

(d) Ad-interim and interim order in terms of prayer clause(c) above.

(e) for costs be provided for, and

(f) for such other and further reliefs as the nature and circumstances of the case may require.

After institution of the said suit the plaintiff took out Notice of Motion No.2105 of 2006 for the following relief:

"(a) Pending the hearing and final disposal of the suit, the Defendants be restrained by and order and injunction of this Hon'ble Court from in any manner preventing the Plaintiff from taking delivery of the material of the Container No.TCKU954230-1 covered under Bill of Lading No.2651 and on the same terms and conditions i.e. on payment of Rs.11,330/- as given for delivery of goods of the first consignment of Container No.GVDU506928-0 belonging to the Plaintiffs on such terms and conditions as this Hon'ble Court may deed fit and proper.

(b) Cost of the Notice of Motion be provided for.

(c) Any such relief or orders as this Hon'ble Court may deem fit and proper."

The trial Judge has favoured the plaintiff/ respondent No.1 by passing purportedly ad-interim order, which has the effect of mandatory order. A drastic order has been passed which, to say the least, was unwarranted in the fact situation of the present case. I would prefer to reproduce the entire order as passed.

"St.No. Ld.adv.Santosh Raje for the plff.

2414/06 Ld.adv.S.K.Sen for deft.no.1 present.

Representatives of Deft.no.2 and 3 are not present though they are served with the notice.

The proof of service in respect of deft.no.2 and 3 t.o.r.

Read the plaint, Notice of Motion, affidavit in support and perused the documents annexed to the plaint.

Heard both sides.

Deft.no.1 objects for grant of any relief. The goods alleged in the suit are synthetic rubber which is likely to parish and diminish and its value. The plaintiffs will suffer the irreparable loss if no ad-interim relief is granted to them. Urgency is made out. Prima facie case is made out. Ad-interim relief in terms of prayer (a) of Notice of Motion is granted. Usual Leave Liberty and undertaking.

NM be registered. NM be served upon the defts retn.on 13th June, 2006 in C.R.No.2.

The Oral prayer of deft.no.1 for stay of the ad-interim relief is rejected on the grounds already stated above."

6. On plain reading of this order, the only reason recorded by the court below for passing the said drastic order is that the goods are synthetic rubber which are likely to perish and diminish in its value. On this consideration, the court proceeded to pass ad-interim order. Indeed the court has recorded

that prima facie case is made out. But no reason whatsoever has been recorded as to what prima facie case has been made out. It is well settled that the trial Judge is obliged to record sound and tangible reasons, which can be the matter of scrutiny before the superior court. That has not happened in the present case.

7. Counsel for the appellant/original defendant No.1 submits that several preliminary points were raised at the arguments to be considered by the Trial Judge, but not even adverted to in the impugned Judgment. According to the appellant, the suit itself is not maintainable and the City Civil Court has no pecuniary or subject jurisdiction.

8. Be that as it may, suffice it to observe that the order as passed cannot be sustained as there is no tangible reason to justify the same, whatsoever. It is interesting to note that the trial Court later on proceeded to appoint court receiver by order dated 1st June, 2006, which reads thus:

> St.No. 2414/06 Ld.adv.Mr.S.D.Raje for plffs present.
>
> Ld.adv.Neha Pathak for deft.no.1 present on urgent notice.

> Heard both sides.
>
> Deft.no.1 has expressed inability to deliver the suit goods.
>
> At the req.of ld.adv. for the plffs.as the goods will diminish in its value under order 39 rule 2. Receiver is appointed to take the possession of goods forthwith.
>
> The suit is already adjd.to 12th June, 2006.
>
> The oral prayer of deft.no.1 for stay of the order is rejected on the grounds stated above."

9. I find substance in the argument of the appellant that the trial court has clearly exceeded its jurisdiction in appointing court receiver in respect of articles which are synthetic rubber. It is inconceivable that synthetic rubber can be described as a perishable item as has been noted by the Trial Court, which consideration alone has been the basis for granting ad-interim relief. Moreover, there was no prayer made by the plaintiff to invite such order of appointing court receiver. The trial Judge perhaps was in a hurry to pass such order as can be discerned from the nature of order passed, which is not supported by any reason, much less tangible reason.

10. Accordingly, both these appeals succeed. The

impugned orders dated 30th May, 2006 as well as 1st June, 2006 are set aside and the trial Judge is directed to decide the Notice of Motion on its own merits in accordance with the law without being influenced by any observation made in the impugned order or for that matter the present order. The Notice of Motion be disposed of expeditiously, preferably by end of August, 2006.

11. As the order of 1st June, 2006 has been set aside by this order, it necessarily follows that appointment of court receiver has been set aside. The court receiver will take steps to restore possession status quo ante forthwith.

12. In my opinion, having regard to the nature of controversy involved, it will be appropriate, if the matter is assigned to some other Judge by the Principal Judge of City Civil Court. Copy of this order be placed before the Principal Judge of the City Civil Court for passing appropriate direction, as may be advised.

13. Copy of this order be forwarded to the Registrar General, High Court, Mumbai to be placed before the appropriate committee for considering the

observations made in relation to the manner of deciding the case as noted in the order.

14. Appeals as well as civil applications disposed of accordingly.